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APPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/766,738	0/766,738 01/27/2004		Roland Hengerer	426882007800	2842	
20872	7590	12/19/2005		EXAM	EXAMINER	
		ERSTER LLP	DESTA,	DESTA, ELIAS		
425 MARKET STREET SAN FRANCISCO, CA 94105-2482				ART UNIT	PAPER NUMBER	
			•	2857		
				DATE MAILED, 12/10/2005		

Please find below and/or attached an Office communication concerning this application or proceeding.

TY

•		Application No.	Applicant(s)				
•	Office Asticus Communication	10/766,738	HENGERER, ROLAND				
	Office Action Summary	Examiner .	Art Unit				
		Elias Desta	2857				
Period fo	The MAILING DATE of this communication app r Reply	ears on the cover sheet with the c	orrespondende address				
WHIC - Exten after 3 - If NO - Failur Any re	DRTENED STATUTORY PERIOD FOR REPLY HEVER IS LONGER, FROM THE MAILING DATE of time may be available under the provisions of 37 CFR 1.1.1 SIX (6) MONTHS from the mailing date of this communication. Period for reply is specified above, the maximum statutory period of the to reply within the set or extended period for reply will, by statute eply received by the Office later than three months after the mailing of patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tin will apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	N. nely filed the mailing date of this communication. D (35 U.S.C. § 133).				
Status			•				
1) 🛛	Responsive to communication(s) filed on 20 Se	eptember 2005.					
•	This action is FINAL . 2b) ☐ This action is non-final.						
3)□							
	closed in accordance with the practice under E	x parte Quayle, 1935 C.D. 11, 45	53 O.G. 213.				
Dispositi	on of Claims						
4)🖂	Claim(s) 1-12 is/are pending in the application.						
	4a) Of the above claim(s) is/are withdrawn from consideration.						
5)[Claim(s) is/are allowed.						
6)🖂	Claim(s) <u>1-12</u> is/are rejected.						
7)	Claim(s) is/are objected to.						
8)□	Claim(s) are subject to restriction and/o	r election requirement.	•				
Application	on Papers						
9)[2] -	The specification is objected to by the Examine	r.					
10)⊠ The drawing(s) filed on <u>20 September 2005</u> is/are: a)⊠ accepted or b)□ objected to by the Examiner.							
· ·	Applicant may not request that any objection to the		•				
	Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).						
11) 🔲 -	The oath or declaration is objected to by the Ex	aminer. Note the attached Office	Action or form PTO-152.				
Priority u	nder 35 U.S.C. § 119						
• —	Acknowledgment is made of a claim for foreign ☐ All b)☐ Some * c)☐ None of:)-(d) or (f).				
•	1. Certified copies of the priority documents have been received.						
	2. Certified copies of the priority document	• •					
	3. Copies of the certified copies of the priority documents have been received in this National Stage						
	application from the International Bureau						
* See the attached detailed Office action for a list of the certified copies not received.							
	•						
Attachment	c(s)						
	e of References Cited (PTO-892)	4) Interview Summary					
	e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	Paper No(s)/Mail Da 5) Notice of Informal P	ate Patent Application (PTO-152)				
	r No(s)/Mail Date	6) Other:					

Detailed Action

Drawing

1. The Examiner accepts the amendment to the drawing filed on September 20, 2005.

Specification

- 2. The specification is objected to because of the following minor informalities:
 - Page 5, paragraph 31: constants α₁ and α₂ represent decay constant not 'time constant'. Appropriate correction is required.

Explanation of Rejection

Claim rejection – 35 U.S.C. 101 and 112

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. <u>Claims 1-12</u> are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a substantial asserted utility or a well established utility, because the decay rate, which is the level of decomposition rate of the material under measurement, does not have a definite correlation with scent ratio because the outcome of the two variables is not formulated by a well-behaved function, and applicant has not shown otherwise. The base or reference scent value is arbitrarily chosen and then compared to another scent value in order to establish a ratio; however, the ratio defined in the system as a whole may not produce real world value that

Application/Control Number: 10/766,738

Art Unit: 2857

provides substantial or well-established utility. The values sensed by the "electronic sensor" don't seem to have a specific value, like physiologically or chemically interpretable values (such as frequency, PH or concentration values). Claim 9 is indefinite because applicant's statement the characteristics of the first and second volatile components is not known or defined

<u>Claims 1-12</u> are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a substantial asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Response to Argument

Claim rejection 35 U.S.C. § 101 & 112

5. <u>In reference to claims 1-12</u>: the Examiner maintains that the claims are rejected based on the assertion that the claimed invention is not supported by either substantial asserted utility or a well established utility because the decay rate, which is the level of decomposition rate of the material under measurement, does not have a definite correlation with scent ratio because the outcome of the two variables is not formulated by a well-behaved function, and applicant has not shown otherwise. The base or reference scent value is arbitrarily chosen and then compared to another scent value in order to establish a ratio; however, the ratio defined in the system as a whole may not produce real world value that provides substantial or well-established utility. The values sensed by the "electronic sensor" don't seem to have a specific value, like physiologically or chemically interpretable values (such as frequency, PH or concentration values).

Application/Control Number: 10/766,738

Art Unit: 2857

Applicant has stated that the invention does not rely on knowing the decay rate and yet the decay rate is at least directly noted in claims 1 and 5.

Applicant has stated that since claims 1-12 are presented as process or machine claims, they are deemed to be useful and are eligible for a patent protection under 35 U.S.C. § 101. However, 2107 in MPEP also includes a utility requirement that the asserted claimed invention should fulfill in order to be eligible for a patent protection under 35 U.S.C. § 101. For instance, as noted above, the decay rate (reference to claims 1 and 5), which is the level of decomposition rate of the material under measurement, does not have a definite correlation with scent ratio because the outcome of the two variables is not formulated by a well-behaved function, and applicant has not shown otherwise. Applicant has amended claim 9 to read on "the method of marking an object with a volatile identification code". However, claim 9 is indefinite because applicant's statement the characteristics of the first and second volatile components is not known or defined.

The preamble of the amended claim 10 is the method of sealing an object, and yet the steps stated in the claim are intended to determine a reference scent ratio. Hence, the scent ratio does not by any means constitute steps to provide a well-established utility. The values sensed by the "electronic sensor" don't seem to have specific value, like physiologically or chemically interpretable values (such as, PH or concentration values) (claim 12).

<u>Claims 1-12</u> are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a substantial asserted utility or well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Application/Control Number: 10/766,738

Art Unit: 2857

Applicant's arguments filed September 20, 2005 have been fully considered but they are not persuasive.

Conclusion

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elias Desta whose telephone number is (571)-272-2214. The examiner can normally be reached on M-Thu (8:30-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (571)-272-2216. The fax phone numbers for the organization where this application or proceeding is assigned are (571)-273-8300 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)-272-1750.

Elias Desta Examiner Art Unit 2857

-ed

November 21, 2005

MARC S. HOFF SUPERVISORY PATENT EXAMINER TECHNOLOGY CENTER 2800